

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Skype Communications S.A.R.L.)	
Petition to Confirm A Consumer's Right)	RM-11361
To Use Internet Software and Attach Devices)	
to Wireless Networks)	
)	

COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL

The Information Technology Industry Council ("ITI") represents the nation's leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies.¹ ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice, and enhance global competition.

ITI believes that the Commission's Broadband Policy Statement,² including the principles that consumers may run applications of their choice and attach nonharmful devices to the network, applies to broadband wireless networks. Adherence to these principles will provide consumers with significant benefits and access to new software-defined sources of competition. ITI recognizes that wireless networks have network management and security concerns that differ from those of wired networks, and believes

¹ For more information on ITI, including a list of its members, please visit <http://www.itic.org/about.php>.

² *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, FCC 05-151, at 3 (rel. Sep. 23, 2005) ("Broadband Policy Statement").

that the Commission should take into consideration such concerns when applying its Broadband Policy Statement to wireless broadband networks. While the Commission should not adopt regulations to enforce specifically these broadband policy principles in the wireless context, it should monitor industry practices and consumer experiences to ensure that wireless broadband service offerings are consistent with the Commission's Broadband Policy Statement.

As an association whose members are at the forefront of delivering cutting edge communications technologies and services, including Voice over Internet Protocol (“VoIP”) products, to the American public, we believe that the Commission's Broadband Policy Statement provides the appropriate framework for balancing the interests of consumers while recognizing carriers' legitimate network management and security concerns.

I. ITI HAS LONG SUPPORTED BROADBAND CONNECTIVITY PRINCIPLES DESIGNED TO PROTECT BROADBAND CONSUMER INTERESTS, INCLUDING A CONSUMER'S RIGHT TO RUN APPLICATIONS AND ATTACH NONHARMFUL DEVICES OF THEIR CHOICE

ITI has long supported consumer-focused broadband connectivity principles. Such principles play a crucial role in shaping government policy toward broadband networks and help define the consumer broadband experience as new broadband services become an integral part of our economy.

In September 2003, the High Tech Broadband Coalition — a Coalition of high tech companies and organizations including ITI — set forth four principles for broadband consumer connectivity. Among the four principles were a “no blocking” principle designed to ensure that consumers were able to run lawful and nonharmful applications

of their choice and an “attachment” principle designed to ensure that consumers could attach nonharmful devices to the network:

- “Broadband consumers should be able to run applications of their choice, within the bandwidth limits and quality of service of their service plans, as long as they do not harm the provider’s network.”
- “Consumers should be permitted to attach any devices they choose to their broadband connection at the consumer’s premises, so long as they operate within the bandwidth limits and quality of service of their service plans and do not harm the provider’s network or enable theft of services.”³

The Commission subsequently adopted these essential principles as part of its Broadband Policy Statement.⁴ ITI supports the Commission’s Policy Statement, and believes that the Policy Statement’s principles strike an appropriate balance between consumer expectations in the broadband environment and the ability of network operators to manage and prevent harm to their networks. The Commission expressed the “no blocking” and “attachment” principles as follows:

- “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.”⁵
- “To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.”⁶

The above principles were announced in the context of wireline broadband services, when wireline broadband services were classified as Title I information

³ *Ex Parte* Submission by the High Tech Broadband Coalition, CC Docket No. 02-33, CS Docket No. 02-52 (Sep. 25, 2003); *see also Ex Parte* Submission by the High Tech Broadband Coalition, CC Docket No. 02-33, CS Docket No. 02-52 (Aug. 2, 2005).

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, FCC 05-151, at 3 (rel. Sep. 23, 2005) (“Broadband Policy Statement”).

⁵ *Id.* at 3.

⁶ *Id.* at 3 (citing *Hush-A-Phone Corp. v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956); *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968)).

services.⁷ Recently, the Commission declared wireless broadband service to be a Title I information service, classifying it for regulatory purposes in the same category as DSL, cable modem, and broadband over power line.⁸ As the Commission noted when it adopted the Title I classification for wireless broadband, such a classification “furthers [the Commission’s] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in a similar manner.”⁹

II. ITI SUPPORTS THE APPLICATION OF THE COMMISSION’S BROADBAND POLICY STATEMENT TO WIRELESS BROADBAND SERVICES

In keeping with the Commission’s efforts to establish a consistent regulatory framework across broadband platforms, ITI believes that the principles established in the Commission’s Broadband Policy Statement apply to wireless networks. Such principles include the right of consumers to attach nonharmful devices to and run applications of their choice on the network. To the extent that such consumer rights are in doubt, the Commission should make clear this point.

ITI recognizes that the Commission’s broadband policy principles should be construed in light of the particular broadband technology at issue — in this case, wireless broadband. ITI also recognizes that wireless network operators have: (1) technical network management issues that are unique to wireless networks, (2) security requirements, including critical infrastructure protection, and (3) dynamic capacity constraints due to usage levels, available spectrum, and the particular technology being

⁷ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, at 5 (rel. Sep. 23, 2005).

⁸ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53, FCC 07-30, at 2, ¶ 2 (rel. Mar. 23, 2007) (“Wireless Broadband Order”).

⁹ *Id.*

used. For example, the right to attach nonharmful devices to one particular wireless broadband network may necessarily be affected by the different air interface technologies, spectrum bands, and other technical requirements of that particular network.

In addition, wireless networks are subject to certain regulations, such as E911 requirements, that may differ from wireline broadband networks. The Commission should ensure that wireless operators are not hindered from meeting their obligations under such rules.

While ITI recognizes the importance of identifying “harm to the network” in the wireless broadband context, and that wireless networks have different network management and security concerns from those of wireline networks, the consumer right to attach devices and use applications should be limited only in instances where there are legitimate concerns of harm to the network and not simply as a pretext for anticompetitive behavior. The Commission’s broadband policy principles establish that devices and applications that do not harm the network should not be blocked, particularly when these applications and devices offer consumers significant benefits and provide consumers with new sources of competition. For the same reasons that ITI advocated these broadband policy principles for wireline networks — broader consumer access, innovation, and choice — ITI believes such principles are necessary for wireless broadband networks in order for consumers to derive full benefit from the Internet in a more mobile and wireless broadband future.

III. THE COMMISSION SHOULD NOT ISSUE NEW REGULATIONS, BUT SHOULD MONITOR THE EXTENT TO WHICH THE WIRELESS BROADBAND MARKET EXHIBITS CHARACTERISTICS CONSISTENT WITH THE COMMISSION'S BROADBAND PRINCIPLES

The Petition filed by Skype does not ask the Commission to issue regulations, and ITI too believes that it is not necessary at this time for the Commission to issue regulations to protect consumer rights with respect to wireless broadband networks. Consistent with its previous position on wireline broadband services, ITI believes it is premature to promulgate regulations based on the broadband policy principles. However, the Commission should monitor industry practices and consumer experiences to ensure that wireless broadband service offerings are consistent with the Commission's Broadband Policy Statement. The Commission should also review and resolve any complaint concerning the Broadband Policy Statement and wireless broadband service offerings.

In monitoring such services, the Commission must consider the network management and security concerns of wireless carriers, as discussed above. The Commission should also be careful not to upset the benefits and innovations that consumers already enjoy in a market for wireless services that is significantly more competitive than the market for wired services. In particular, the Commission should not upset the technical roadmaps for next generation wireless architectures, in whose development industry standards-setting bodies, service providers and manufacturers have expended considerable time, effort and resources. The Commission should also be careful not to force onto consumers significantly higher retail pricing for wireless devices by jeopardizing carrier-subsidized sales of wireless devices.¹⁰

¹⁰ It should be noted that Skype's Petition does not seek to disturb the carrier-subsidized handset

IV. THE COMMISSION SHOULD RELY ON INDUSTRY TO ADDRESS TECHNICAL ISSUES PERTAINING TO THE ABILITY OF CONSUMERS TO ATTACH NONHARMFUL DEVICES AND RUN APPLICATIONS AND SERVICES OF THEIR CHOICE

As stated above, ITI does not support new regulations to implement the consumer rights to attach nonharmful devices to and run applications of one's choice on wireless broadband networks. Instead, the Commission should monitor industry practices and consumer experiences as they develop. In furtherance of that role, the Commission should rely on industry and the various interested parties — including carriers, device manufacturers, mobile operating system developers, and application software developers — to ensure that new devices can be attached to and new applications can run on wireless broadband networks without causing harm to such networks. With Commission monitoring and awareness, such a cooperative process could ensure that the carriers legitimate network security and management concerns are protected while, at the same time, consumers enjoy the benefits of new and nonharmful devices and applications.

Respectfully submitted,

/s/ Brian Peters
Brian Peters
Director, Government Relations
INFORMATION TECHNOLOGY INDUSTRY
COUNCIL
1250 Eye Street, NW
Suite 200
Washington, DC 20005
(202) 737-8888

Dated: April 30, 2007

pricing model.